Goi Wang Firn (Ni Wanfen) and others *v* Chee Kow Ngee Sing (Pte) Ltd [2014] SGHC 261

Case Number : Suit No 1016 of 2013 (Registrar's Appeal No 329 of 2014)

Decision Date : 17 December 2014

Tribunal/Court : High Court

Coram : Steven Chong J

Counsel Name(s) : James Ponniah and Leong Sue Lynn (Wong & Lim) for the plaintiffs; Tan Hsuan Boon and Yeo Zhen Xiong (Wee Swee Teow & Co) for the defendant.

Parties : Goi Wang Firn (Ni Wanfen) and others — Chee Kow Ngee Sing (Pte) Ltd

Trusts – Express trusts – Corporate beneficiary

Trusts – Express trusts – Rule against perpetuities

Evidence – Admissibility of evidence – Hearsay

17 December 2014 Judgment reserved.

Steven Chong J:

Introduction

1 The facts of this case are not complicated. Property registered in the name of a man who has since passed on is now the subject of an ownership dispute between parties seeking opposing declarations from the court. On the one hand, the executors and trustees named in the deceased's will claim that the property is wholly owned by his estate and available for distribution as a part thereof. On the other hand, a company (of which the deceased was previously a director) asserts that the property is held on express trust for it and therefore did not fall within his estate for distribution. The company adduced documentary proof to show that the deceased had made clear and unequivocal declarations of trust in its favour during the course of his lifetime and, on the basis of such evidence, succeeded in striking out the executors' claim before the Assistant Registrar. The executors appealed against the Assistant Registrar's decision, and this came up for hearing before me.

2 While the facts of this case may not be particularly remarkable, they did generate some interesting legal arguments from counsel for the executors, Mr James Ponniah ("Mr Ponniah"), in his attempt to undermine the otherwise unquestionable validity of the purported express trust. First, he began by arguing that the well-established "beneficiary principle" in trusts law prohibited the creation of an express trust for the benefit of a *non-human* entity such as the company in this case. That struck me as a rather startling submission for I have never understood the "beneficiary principle" to draw a distinction between trusts for human and non-human beneficiaries *so long as it was capable of enforcement*. However, as I was not pointed to any specific authority which has dealt squarely with this point, I considered that it would be beneficial to examine Mr Ponniah's submission more closely.

3 Second, Mr Ponniah also further submitted, in the course of developing the above argument, that a company could *exceptionally* be the beneficiary under an express trust *if* the trust was (a) expressed to be for the purpose of benefitting human beings, and (b) limited in duration within the common law perpetuity period of a life in being plus 21 years. He argued that these two qualifications

could be drawn from the oft-cited authority of *In re Denley's Trust Deed* [1969] 1 Ch 373 ("*Re Denley's Trust*") which, by his understanding, was similarly a case involving an express trust for the benefit of a company. On this view, it was submitted that the deceased's declarations fell short as they neither specified the purpose nor the duration for which the property was to be held on trust. Again, I found this argument rather intriguing because Mr Ponniah's interpretation of *Re Denley's Trust*, *viz*, that it was a trust for a company, did not accord with my understanding of the decision.

4 The arguments as broadly outlined above clearly touch on several fundamental and interconnected concepts of trusts law which, in my view, merit closer examination. To provide a more complete picture of the analysis which follows, however, I should add that Mr Ponniah also attacked the existence of the alleged express trust on several other fronts. In this regard, it was argued that, apart from the legal objections stated above, the trust was also invalid because the deceased lacked the necessary intention to create it. Further, it was also argued that, as a matter of evidence, certain classes of documents which the company sought to rely on to prove the express declarations of trust were in any event either inadmissible as proof of the express trust or should be given little weight.

5 These arguments will be fleshed out in greater detail below. For now, I shall proceed to set out the background to the parties' dispute and the procedural history leading to the present appeal.

Background to the appeal

The parties' dispute

6 The plaintiffs are the children of one Mr Goi Lai Soon ("the Deceased") who passed away on 16 September 2011. [note: 1] They were named in the Deceased's will as the joint trustees and executors of his estate. [note: 2] They were each also bequeathed a one-third share in 50% of the estate with the other 50% to be distributed to the Deceased's wife. [note: 3]

7 The defendant is a family-run company which was incorporated in Singapore on or about 13 October 1969 and carries on the business of operating department stores cum supermarkets. [note: 4] The Deceased was one of its four original directors and shareholders and remained as such until his death. [note: 5] The remaining three original shareholder-directors of the defendant were the Deceased's father, Goi Chong Siak ("GCS"), and the latter's two younger brothers, Goy Chong Ngee ("GCN") and Goy Seng Tee ("GST"). [note: 6]

8 The parties' dispute is over the ownership of a 999-year leasehold property commencing from 1 January 1970 [note: 7] known as 153 Thomson Road, Goldhill Shopping Centre, Singapore 307607 ("the Leasehold"). [note: 8] The Leasehold is registered in the name of the Deceased. The transaction-history of the Leasehold leading up to the Deceased's acquisition of the legal title in the Leasehold is evidenced by the following:

(a) First, there was a sale and purchase agreement of the Leasehold dated 19 June 1968 between Goldhill Properties Limited ("GPL") as vendor and Ang Peow Tian ("Ang") and Lim Poo @ Lim Guat Poo ("Lim") as purchasers. [note: 9] The total purchase price was stated as $58,500 and was to be paid by Ang and Lim to GPL in instalments.

(b) On 12 February 1969, the Deceased entered into an agreement with Ang and Lim who had, by this time, made partial progress payments amounting to $20,475 to GPL. [note: 10] Pursuant to

this agreement, Ang and Lim assigned all their rights, interests and obligations under the existing sale and purchase agreement with GPL to the Deceased. This assignment was in consideration of the Deceased paying them $20,475 and the balance purchase price of the Leasehold to GPL.

(c) On 2 August 1973, the Deceased entered into a separate agreement with GPL whereby the latter agreed to transfer the Leasehold to the Deceased in consideration of the Deceased paying the balance purchase price. [note: 11]

(d) On 3 September 1981, the Subsidiary Certificate of Title to the Leasehold was issued in the name of the Deceased and registered in Subsidiary Land Register Volume 73 Folium 158. [note: 12]

9 I pause here to note that the parties' pleaded positions differed as to who had *paid* for the purchase of the Leasehold pursuant to the agreements in (b) and (c) above. The plaintiffs contended that the entire purchase price was paid by the Deceased partly upon taking the assignment from Ang and Lim and the balance thereof directly to GPL. [note: 13] The defendant, however, denied this and pleaded that it had given valuable consideration and/or had paid for the Leasehold. [note: 14] It would ordinarily be material in the context of such ownership disputes to investigate into the true source of funds for the purchase of the property. This exercise is conducted in order to determine whether a resulting trust operates in favour of the payor who would generally seek to argue a split between the beneficial and legal title. However, I was not required to undertake such an inquiry here because, during the hearing before me, counsel for the defendant, Mr Tan Hsuan Boon ("Mr Tan"), did not seriously pursue this point. He was content to take the plaintiffs' case at its highest by accepting (without prejudice to his position in the underlying action) that the Deceased had indeed paid for the entire purchase because that accorded with his primary case which was premised on the existence of an *express trust* – the fact that beneficial ownership vested with the Deceased was consistent with him being competent, by express declaration, to divest himself of the same. The defendant's case based on an express trust will be elaborated upon below.

10 The Leasehold was initially used in the early 1980s by the defendant for its business operations. [note: 15] Subsequently, from 1990 onwards, it was rented out to various tenants with the defendant being named as the landlord under the successive tenancy agreements. [note: 16] The execution of these tenancy agreements by the defendant was typically approved by directors' resolutions (signed, *inter alia*, by the Deceased) stating that the defendant would "let out *its* property known as No 153 Goldhill Centre Thomson Road, Singapore … and that [the Deceased], a director of [the defendant] be authorised to sign the lease for and on behalf of [the defendant]" [emphasis added]. [note: 17] The defendant collected the rental proceeds in respect of these agreements which was paid into its bank account and reflected in its audited accounts. [note: 18] The defendant also settled the property tax and other outgoings and maintained the Leasehold. [note: 19] This state of affairs continued even after the Deceased's demise in September 2011.

11 Probate of the Deceased's will was granted to the plaintiffs as the executors jointly on 23 July 2013 and extracted on 26 July 2013. [note: 20] The plaintiffs subsequently sought legal advice and were informed that they now stood in the shoes of the Deceased as the registered proprietor of the Leasehold whose title was paramount. [note: 21] Consequently, the plaintiffs sought to distribute the Leasehold in accordance with the Deceased's testamentary wishes. [note: 22]

12 The plaintiffs aver, however, that the second plaintiff was then informed by a director of the

defendant, Mr Goy Siang Boon, that the Deceased held the Leasehold on trust for the defendant. [note: 23] The second plaintiff, who was and still is a director of the defendant, was also informed that he would be acting in breach of his fiduciary duty to the defendant and acting in conflict of interest if the Leasehold was distributed according to the Deceased's will. In light of such opposition, the plaintiffs decided that they had no choice but to commence the underlying action in Suit No 1016 of 2013 to resolve the dispute over the beneficial ownership of the Leasehold. [note: 24]

The procedural history

13 On 7 November 2013, the plaintiffs filed their Statement of Claim seeking, *inter alia*, declarations that: (a) at all material times prior to the Deceased's death, the Leasehold was beneficially and legally owned by the Deceased; (b) upon the grant of probate to the plaintiffs on 23 July 2013, the Leasehold formed part of the assets of the Deceased's estate subject to distribution in accordance with the terms of his will; and (c) the plaintiffs as trustees of the will were entitled to distribute the Leasehold in accordance with the terms of the will. [note: 25]

14 The defendant filed its Defence and Counterclaim on 9 January 2014. In its Defence, the defendant denied the plaintiffs' claim and pleaded that the Deceased held the Leasehold on express trust for the defendant. [note: 26] It was also pleaded in the alternative that the Deceased held the Leasehold on a resulting trust and/or constructive trust for the defendant and/or that the plaintiffs were estopped from denying the defendant's equitable interest in the Leasehold or asserting that it formed part of the Deceased's estate. [note: 27] However, as mentioned above at [9], for the purposes of the application before me and the appeal, the defendant only advanced its case on the basis of an express trust; hence arguments based on these alternative grounds were not placed before me. In its Counterclaim, the defendant sought for, *inter alia*, (a) a declaration that the Deceased held the Leasehold on trust for the defendant; and (b) an order that the personal representatives of the Deceased transfer forthwith the Leasehold to the defendant free from all liens, charges or encumbrances. [note: 28] It should also be mentioned that, since the commencement of this action, the defendant has lodged a caveat against the Leasehold. [note: 29]

15 The plaintiffs filed their Reply and Defence to the Counterclaim on 10 February 2014 and, after several rounds of amendments to the pleadings by the parties, the defendant filed Summons No 3703 of 2014 ("SUM 3703/2014") on 29 July 2014 to strike out the plaintiffs' claim and for judgment to be entered on its counterclaim pursuant to the inherent jurisdiction of the court and/or O 18 r 19 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC"). [note: 30] An order in terms of the defendant's application was granted on 19 September 2014 by the Assistant Registrar who struck out the plaintiffs' claim on the basis that it was scandalous, frivolous and/or vexatious (O 18 r 19(1)(*b*)), and/or otherwise an abuse of the process of the court (O 18 r 19(1)(*d*)). [note: 31] The plaintiffs appealed against the Assistant Registrar's order and this came up for hearing before me on 23 October 2014.

The arguments on appeal

The defendant's case

16 The essence of the defendant's case should be clear by now – its ownership claim to the Leasehold is staked upon the existence of an express trust. The defendant's counsel, Mr Tan, argued that there is no difficulty in satisfying the formal requirements under s 7(1) of the Civil Law Act (Cap 43, 1999 Rev Ed) ("CLA") which stipulates that a declaration of trust in respect of any interest in

immovable property "must be manifested and proved by some writing signed by some person who is able to declare such trust". This is because, by the plaintiffs' own case that the Deceased had fully paid for the Leasehold, he was able to declare a trust in favour of the defendant and indeed did so as evidenced by the following documents, *all of which bore his signature*:

(a) First, the defendant relied on its audited accounts from 1982 to 2009 which contain in the notes appended thereto a statement that (save for some alterations in the wording through the years) reads as follows: "The title deeds of leasehold buildings of [the defendant] have been registered in the names of the directors. The directors are holding the title deeds in trust for [the defendant]." [note: 32] It was not disputed that the reference to "leasehold buildings" in these accounts includes, *inter alia*, the Leasehold. It also refers to several other properties which were (and continue to be) held on trust for the defendant by two of its other directors, namely, GCS and GCN, and their respective estates since their deaths. This latter point is of some relevance and will be elaborated upon below at [58].

(b) Second, the defendant relied on two affidavits which were filed by the Deceased on 29 June 2000 and 16 November 2000 in a previous suit, DC Suit No 928/2000 ("DC 928/2000"), commenced by the defendant against one of its tenants to, *inter alia*, repossess the Leasehold and recover rental arrears. [note: 33] In these two affidavits, the Deceased affirmed on oath that he was "the registered proprietor of the premises known as No 153 Thomson Road Goldhill Centre Singapore 307607 and am holding the premises in trust for [the defendant] who is and was at all material times the beneficial owner of the premises". [note: 34]

(c) Third, the defendant relied on an undated letter produced by the plaintiffs during discovery. This letter is addressed to the defendant's auditors, L C Loong & Co, and it contains the following statement by the Deceased as undersigned: "I, Goi Lai Soon, director of [the defendant], do hereby certify that the title deeds of the property, at 153, Thomson Road, belonging to [the defendant] is registered in my name, and I am holding the title deeds in trust of [the defendant]." [note: 35]

(d) Fourth, the defendant relied on a letter sent to the defendant's company secretary, Ongserve Management, in or about December 2003 where it is stated that "[t]he long leasehold buildings of [the defendant] have been registered in the names of the directors … who are holding the properties in trust for [the defendant]". [note: 36] Following that statement is a list of properties registered in the names of the defendant's respective directors and, in particular, the Leasehold is identified as being held by the Deceased. The solicitor who acted for the defendant in DC 928/2000, Mr Thomas Toh, has filed an affidavit in the present application confirming that the Deceased's abbreviated signature is found at the bottom of this letter. [note: 37]

17 Mr Tan emphasised that these declarations by the Deceased are consistent with the surrounding evidence which unquestionably prove that the defendant's directors (including the Deceased) have indeed treated the Leasehold as belonging beneficially to the defendant. [note: 38] In this regard, Mr Tan pointed to, *inter alia*, the tenancy agreements, directors' resolutions, rental collection and expenses incurred by the defendant in respect of the Leasehold (see [10] above) as further proof that the Deceased was merely holding it on trust. [note: 39] Mr Tan submitted that, in light of such overwhelming evidence, it is irrefutable that the Deceased had declared an express trust over the Leasehold and the plaintiffs cannot now sustain an assertion otherwise. In these circumstances, the Assistant Registrar's decision to strike out the plaintiffs' claim should be upheld.

The plaintiffs' case

18 The submissions made in response by the plaintiffs' counsel, Mr Ponniah, raised some interesting legal questions as I had mentioned at the outset of this judgment. His arguments can be grouped under three distinct heads.

19 First, Mr Ponniah argued that the trust which the defendant alleges to have been created by the Deceased's declarations is void for offending the established "beneficiary principle" in trusts law. Quoting from an extract in Philip H Pettit, *Equity and the Law of Trusts* (Oxford University Press, 12th Ed, 2012) ("*Pettit*") (see below at [25]), Mr Ponniah stated that this principle prescribes that an express trust can only be created for the benefit of human beings or for a charitable purpose. [note: 40] Since the purported trust here is neither a charitable purpose trust nor a trust for human beneficiaries, it is *prima facie* void unless, according to Mr Ponniah, it falls within a limited exception which appears to have been carved out by Goff J (as he then was) in *Re Denley's Trust*. The facts of *Re Denley's Trust* will be discussed below but, for now, it suffices to say that Mr Ponniah interpreted the case as being one where the trust was declared for *the company* concerned and was upheld as valid because, significantly, there was a clear purpose prescribed there to benefit human beings and it was also limited in duration within the common law perpetuity period. [note: 41] Juxtaposing the factual matrix in *Re Denley's Trust* with the present case, Mr Ponniah concluded that the "stark difference would be readily obvious" since the purpose and the period of the alleged trust here were never defined by the Deceased and thus remained uncertain. [note: 42]

20 Mr Ponniah's second argument was that, even if the beneficiary principle was not offended, the alleged trust was nevertheless void because the Deceased lacked the necessary certainty of intention to create the trust. [note: 43] The plaintiffs' case here, essentially, was that one can only part with the beneficial interest in property by express declaration if one is aware that such interest is vested in him to begin with. Mr Ponniah argues that this was not the Deceased's state of mind when he made the declarations relied on by the defendant because he was, at all times, labouring under the mistaken belief that he was only a bare *trustee* of the Leasehold, *ie*, the Deceased only believed himself to be the owner of the *legal* title in the Leasehold. [note: 44] Mr Ponniah stated that the Deceased's mistaken belief was twofold:

(a) First, Mr Ponniah claimed that there is documentary evidence to show that the Deceased believed from the very outset that he was holding the Leasehold on trust for a partnership known as Chee Kow & Co ("the Partnership") (see [56] below). To provide some context, the Partnership was in existence prior to the incorporation of the defendant and was formed by GCS, GCN and GST. The Deceased was never a partner. [note: 45] It is not clear why the Deceased may have been under the impression that he held the Leasehold for the benefit of the Partnership but, be that as it may, Mr Ponniah argued that, as a matter of law, he simply could not have done so. A partnership is not a legal entity and thus cannot own real property legally or beneficially. [note: 46]

(b) Mr Ponniah further claimed that, to compound the above mistake of law, the Deceased was also labouring under a further mistake of fact. In this regard, it was pointed out that the Deceased erroneously believed that the Partnership was absorbed into the defendant when it was incorporated, thus explaining his declarations of trust in favour of the defendant. [note: 47] Mr Ponniah argues that this was an error by the Deceased because even after the incorporation of the defendant in October 1969, the Partnership continued trading as a separate entity as

evidenced by the fact that it had submitted a profit and loss account for the year ending 1970 on 31 December 1970. [note: 48]

21 Third, Mr Ponniah argued that the defendant's reliance, in particular, on the audited accounts and the two affidavits affirmed by the Deceased in DC 928/2000, was misplaced. As regards the audited accounts, Mr Ponniah's submission was linked to his earlier argument that the Deceased was mistaken as to his declarations of express trust in respect of the Leasehold in favour of the defendant. It was claimed that because the Deceased had erroneously believed that he was holding the Leasehold for the benefit of the Partnership and, subsequently, the defendant, that mistake was naturally "mirrored in the audited accounts" which were thus rendered "highly suspect". [note: 49] As for the Deceased's two affidavits, Mr Ponniah relied on *Ching Mun Fong (representative of the estate of Tan Geok Tee, deceased) and another v Peng Ann Realty Pte Ltd and another appeal* [1995] 1 SLR(R) 560 ("*Ching Mun Fong*") in support of the argument that these affidavits constitute inadmissible hearsay evidence. [note: 50]

Issues

22 The broad, overarching issue in the present case is whether the court should exercise its power pursuant to its inherent jurisdiction or O 18 r 19(1) of the ROC to strike out the plaintiffs' claim so as to protect the defendant "from being harassed and put to the trouble and expense of preparing for a trial" (see *Hong Alvin v Chia Quee Khee* [2011] SGHC 249 at [16]). In this respect, it should be noted that the defendant's application in SUM 3703/2014 discloses two grounds for striking out the plaintiffs' claim: (1) that it is scandalous, frivolous and/or vexatious (O 18 r 19(1)(*b*)); and/or (2) that it is otherwise an abuse of the process of court (O 18 r 19(1)(*d*)). The first ground is satisfied when an action is shown to be "plainly or obviously unsustainable" (see *The "Bunga Melati 5"* [2012] 4 SLR 546 at [33]), while the second will be invoked to prevent the judicial process from being used as a means of vexation and oppression in the process of litigation (see *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 at [22]) and it has long been recognised that claims falling into this category are those which may be described as "hopeless" or "doomed to fail" (see *Kim Hok Yung and others v Cooperatieve Centrale Raiffeisen-Boerenleenbank BA (trading as Rabobank) (Lee Mon Sun, third party)* [2000] 2 SLR(R) 455 at [17]).

23 From the parties' submissions as broadly outlined above, it is clear that there are no material disputes of fact. Although the parties disagree as to who had paid for the Leasehold in their pleadings, I have explained that this was not put in issue before me. This is neither a relevant nor material fact to determine the existence and validity of the express trust. In this appeal, it is important to note that the plaintiffs do not challenge the authenticity of the documents relied on by the defendant and, thus, *prima facie* there appears to be sufficient evidence that the Deceased had indeed declared an express trust over the Leasehold in favour of the defendant. The plaintiffs, however, seek to undermine such a finding by arguing that the express trust which is purportedly borne out by these documents is invalid as a matter of law and that the reliance placed on some of these documents is in any event objectionable. If these arguments fail, it must follow that the plaintiffs' action ought to be struck out on the basis that it is either "plainly or obviously unsustainable" or "doomed to fail". In the circumstances, the determination of this appeal would entail an examination of the following issues raised by the plaintiffs' legal arguments:

(a) Can an express trust be declared for the benefit of a company and, if so, must such a trust be (i) for a prescribed purpose to benefit human beings and (ii) limited in time within the common law perpetuity period? ("the Corporate Beneficiary Issue")

(b) Is the alleged express trust void for the Deceased's lack of intention to create a trust owing to his mistaken belief that he was only ever a trustee of the Leasehold? ("the Mistake Issue")

(c) Can the defendant rely on its audited accounts and the Deceased's two affidavits in DC 928/2000 as proof that he had made express declarations of trust? ("the Evidentiary Issue")

24 I shall proceed to examine each of these issues in turn.

Analysis

The Corporate Beneficiary Issue

Can a company be a beneficiary under an express trust?

25 Mr Ponniah, as mentioned earlier, relied on a particular passage in *Pettit* to advance his submission that, by operation of the "beneficiary principle", an express trust can only be created for the benefit of a *human* beneficiary or for a charitable purpose. It bears reproducing this passage of *Pettit* at pp 59–60 in its entirety (though with the footnotes omitted) to appreciate the full context of the learned author's commentary:

> Even where the purpose of a trust is clearly defined so that the trust cannot be said to be void for uncertainty, ***further*** *difficult problems may arise where the object of a trust is a* ***non-human beneficiary*** *, such as a dog, an unincorporated association, or a non-charitable purpose*. The basic principle, subject perhaps to the possibility of review of the decisions by the [English] Supreme Court and with the exception of charitable trusts, is that 'a trust to be valid must be for the benefit of individuals'. This is the principle stated by Grant MR in *Morice v Bishop of Durham*, that 'there must be somebody in whose favour the court can decree performance', restated by Harman J in *Re Wood*, who observed 'that a gift on trust must have a cestui que trust', and since affirmed by Roxburgh J in *Re Astor's Settlement Trusts*, and the Court of Appeal in *Re Endacott*. Accordingly it has been said: 'A gift can be made to persons (including a corporation) but it cannot be made to a purpose or to an object; so, also a trust may be created for the benefit of persons as cestuis que trust, but not for a purpose or object unless the purpose or object be charitable.' ***The idea behind this seems to be that, otherwise, the validity of the trust would depend upon the whim of the trustee and 'a court of equity does not recognize as valid a trust which it cannot both enforce and control'.*** This ***'beneficiary principle'*** , which ***operates to invalidate non-charitable purpose trusts*** , may, however, be held to be inapplicable in certain situations and is also subject to exceptions. [emphasis added in italics and in bold italics]

26 Mr Ponniah relied on *Pettit's* specific use of the term "*non-human*" beneficiary in the passage above to argue that it is implicit that the "beneficiary principle" strictly requires there to be a *human* beneficiary for a trust to be valid. However, since the purported trust here has been created for an incorporeal, non-human entity (*ie*, the defendant company), it must, accordingly, be declared invalid.

27 I disagree with Mr Ponniah's submission. My understanding of the "beneficiary principle" has always been that it is intended, through its insistence on the presence of some identifiable beneficiary, to ensure that a trust can both be enforced against the trustee and controlled by the courts. The aim of this is to nullify those trusts which have as their objects purely private purposes that, by virtue of their wholly abstract nature, cannot conceivably be enforced or policed. Indeed, this appears to be confirmed by the very passage of *Pettit* which Mr Ponniah has drawn my attention

to. The context of the passage was clearly in relation to *purpose* trusts in which a further difficulty was identified as regards non-human beneficiaries. It was therefore not immediately apparent to me where the objection lay in recognising that a company could own property beneficially under an express trust since it is trite that a company *is* a legal person capable of suing in its own right (see s 19(5) of the Companies Act (Cap 50, 2006 Rev Ed) and *Walter Woon on Company Law* (Tan Cheng Han SC gen ed) (Sweet & Maxwell, Rev 3rd Ed, 2009) at para 2.46) and can, accordingly, enforce a trust if necessary.

28 However, I was somewhat surprised by the apparent absence of any authorities (local or foreign) which have dealt *directly* with the issue before me. While Mr Tan was able to identify some authorities which *allude* to the possibility of companies being beneficiaries under an express trust (see, *eg*, *Foreman v Hazard* [1984] 1 NZLR 586 at 596), [note: 51] I do not think that such passing references can of itself dispose of the present issue. In the circumstances, I was minded to survey other academic commentaries to see whether Mr Ponniah's submission found support elsewhere and this appears not to be the case. Many other texts explicitly contemplate that a company *can* be a beneficiary under an express trust although none, unfortunately, have discussed the point extensively (see, *eg*, John Mowbray QC *et al*, *Lewin on Trusts* (Sweet & Mawwell, 18th Ed, 2008) ("*Lewin on Trusts*") at para 2-30, Alastair Hudson, *Equity and Trusts* (Routledge, 7th Ed, 2013) at pp 197 and 202, AH Oosterhoff *et al*, *Oosterhoff on Trusts: Text, Commentary and Materials* (Carswell, 7th Ed, 2009) at p 185, and DWM Walters, *Law of Trusts in Canada* (Carswell, 2nd Ed, 1984) at p 122). I nevertheless refer to other contrasting commentaries as they did serve to reinforce my initial doubts over Mr Ponniah's submission and also because they appeared to suggest that it might well be *self-evident* that there is no bar to a company holding property beneficially under an express trust.

29 In my view, the issue at hand is best resolved by examining the underlying cases cited in the quoted passage of *Pettit* itself to determine whether they truly stand for the proposition that an express trust cannot be created for a non-human beneficiary. These cases referred to are – in the chronological order as set out in *Pettit* – *Morice v Bishop of Durham* 9 Ves 399 ("*Morice*"), *In re Wood, decd* [1949] 1 Ch 498 ("*Re Wood*"), *In re Astor's Settlement Trusts* [1952] 1 Ch 534 ("*Re Astor's Settlement*"), and *In re Endcacott, decd* [1960] 1 Ch 232 ("*Re Endacott*"). I should state that it is always good and sound practice for counsel in citing textbook authorities, to examine the underlying authorities which were relied on by the author to support the proposition. The obvious importance and value of such a practice is borne out below.

30 Having reviewed these authorities which is a task which should have been undertaken by Mr Ponniah in presenting the submission to the court, it is clear to me that none of them involved trusts for the benefit of corporate beneficiaries, or any *beneficiaries* for that matter. Instead, all these cases concerned trusts which were held to be for non-charitable *purposes*: (a) in *Morice*, a testatrix had bequeathed all her personal estate to the Bishop of Durham who was to dispose of the ultimate residue "to such objects of benevolence and liberality as [he] in his own discretion shall most approve of"; (b) in *Re Wood*, the trust in question was created for the particular society on whose behalf an appeal was transmitted by the British Broadcasting Corporation on their weekly programme titled "The Week's Good Cause"; (c) in *Re Astor's Settlement*, Viscount Astor had made a settlement of all the issued shares in the Observer newspaper, the income of which was to be applied for, *inter alia*, the maintenance of good understanding between nations, the preservation of the independence and integrity of newspapers, and the protection of newspapers from being absorbed or controlled by combines; and, finally, (d) in *Re Endacott*, a testator had given his residuary estate to the North Tawton Parish Council "for the purpose of providing some useful memorial to 'myself'". All the trusts in these cases failed in the absence of any beneficiary who could enforce them.

31 When one appreciates the context in which these cases arose and were decided, it becomes

clear that the courts' pronouncements were not in any way directed at making fine distinctions between human and non-human beneficiaries as Mr Ponniah argued here. After all, there were no cognisable beneficiaries in any of these cases to begin with. The true distinction being made in these cases, rather, was between trusts for *beneficiaries* and trusts for *purposes* (non-charitable purposes to be specific). Therefore, when, for example, Grant MR stated in *Morice* at 403 that "[t]here must be *somebody*, in whose favour the Court can decree performance" [emphasis added] or when Roxburgh J in *Re Astor's Settlement* at 540 echoed Lord Parker's statement in *Bowman and others v Secular Society Limited* [1917] AC 406 that "[a] trust to be valid must be for the benefit of *individuals*" [emphasis added], I do not think that these statements can properly be understood in the lay sense as requiring there to be some *human* beneficiary. This reads into the statements a qualification which the courts concerned had certainly not addressed their minds to and thus could not possibly have intended to impose.

32 In my view, all that is sought to be conveyed by the cases is that there must be *some* beneficiary (as opposed to none at all) who has the requisite legal personality and *locus standi* to come before the court to enforce the terms of the trust. Whether that beneficiary takes the form of a human being or a corporate body is quite beside the point because, as I have mentioned, a company is no less a legal person than a human is – among the many other incidents of incorporation is the crucial fact that a company can sue and be sued in its own name. Pure private purposes trusts, however, are by their very nature not amenable to the court's control and that, in my judgment, is the true mischief at which the "beneficiary principle" is aimed and precisely the reason why the trusts in the aforementioned cases failed. As Roxburgh J succinctly stated in *Re Astor's Settlement* at 541–542:

> … [I]f the purposes are not charitable, great difficulties arise both in theory and in practice. In theory, because having regard to the historical origins of equity it is difficult to visualize the growth of equitable obligations which *nobody can enforce*, and in practice, because it is not possible to contemplate with equanimity the creation of large funds devoted to non-charitable purposes which *no court and no department of state can control*, or in the case of maladministration reform. … [emphasis added]

33 It has been observed that, since *Re Astor's Settlement*, "the contemporary rationale for the [beneficiary] principle is conventionally couched in terms of 'enforceability and control'" (see Graham Moffat, Gerry Bean & Rebecca Probert, *Trusts Law: Text and Materials* (Cambridge University Press, 5th Ed, 2009) ("*Moffat, Bean & Probert*") at p 257). A trust created for the benefit of a company such as the defendant in the present case engages neither of these twin concerns. Bearing this in mind, I do not think that the learned author of *Pettit*, in stating that a trust for a "non-human beneficiary" raises potential problems, can reasonably be said to have had in contemplation a trust for a *corporate* beneficiary. Indeed, this is clear when one sees that the examples given in *Pettit* of such "non-human beneficiaries" include "a dog, an unincorporated association, or a non-charitable purpose".

34 Accordingly, it would be a wholly misguided application of the "beneficiary principle" if the express trust created over the Leasehold here was struck down simply on the basis that it was for the benefit of the defendant *company*. I therefore find that Mr Ponniah's submission on the "beneficiary principle" is, with respect, legally unsustainable.

Must an express trust for a company be (a) for the benefit of human beings and (b) limited within the common law perpetuity period?

35 Mr Ponniah had a further related submission. He argued that even if it is accepted that a trust

can be created for the benefit of a company, the decision in *Re Denley's Trust* supports the view that such a trust for corporate beneficiaries must have a clearly prescribed purpose to benefit human beings which must, further, be limited in duration within the common law perpetuity period of a life in being plus 21 years.

36 I pause here to make an observation regarding the circumstances in which this submission arose. In this regard, Mr Tan pointed out that at the hearing before the Assistant Registrar, the plaintiffs took the position that the "beneficiary principle" operated as an *absolute* prohibition against corporate beneficiaries. [note: 52] The plaintiffs made no mention of *Re Denley's Trust* at the time. In these circumstances, it is clear that the two qualifications mooted by Mr Ponniah on the basis of *Re Denley's Trust* in this appeal represent a rather significant shift in the plaintiffs' position and that, to my mind, suggests that it was not a properly considered submission. It was therefore not entirely surprising to find that Mr Ponniah's submission was, in the final analysis, founded on a misreading of *Re Denley's Trust*. While *Re Denley's Trust* is admittedly not a straightforward case that has given rise to quite contrasting interpretations over the years, to my knowledge, it has never been suggested that the effect of the decision was to create a special exception to the "beneficiary principle" for trusts specifically involving corporate beneficiaries. Such an interpretation was clearly misconceived as the following discussion will show.

(1) Distinguishing *Re Denley's Trust*

37 The case of *Re Denley's Trust* concerned a trust over land which had been conveyed by a company, HH Martyn & Co Ltd, to trustees under a trust deed. By cl 2(c) of the trust deed, it was stated that the land would be "maintained and used as and for the purpose of a recreation or sports ground primarily for the benefit of the employees of the company". The trustees could also allow the land to be used "secondarily for the benefit of … other persons". The question which arose on these facts was whether the trust was void on the basis that cl 2(c) amounted to a non-charitable purpose trust that offended the "beneficiary principle" or because it was a trust for the benefit of individuals constituting an unascertainable class.

38 Goff J upheld the trust as valid. Regarding the latter issue on ascertainability, it was not disputed that the employees of the company were an ascertainable class (see 386G). Goff J then went on to decide that the reference to "other persons" in cl 2(c) constituted a power rather than a trust; hence any difficulties encountered by the trustees in exercising it could be resolved with the help of the court (see 388B). I should also mention, since it is relevant to Mr Ponniah's argument, that the trust in *Re Denley's Trust* was also expressed to be limited within the common law perpetuity period and thus did not infringe the rule against perpetuities (see 386E).

39 The particular aspect of *Re Denley's Trust* which has given rise to controversy concerned the exact basis upon which Goff J upheld the validity of the trust. Did Goff J create an exception to the general prohibition against purpose trusts by recognising as valid a *purpose trust* which was enforceable by an ascertainable class of persons (*ie*, the employees), or was this simply treated as a *persons trust* for the employees as beneficiaries? The relevant portion of Goff J's judgment on this point is as follows (see 382G–384A):

> *I think there may be a purpose or object trust, the carrying out of which would benefit an individual or individuals, where that benefit is so indirect or intangible or which is otherwise so framed as not to give those persons any locus standi to apply to the court to enforce the trust, in which case the beneficiary principle would, as it seems to me, apply to invalidate the trust, quite apart from any question of uncertainty or perpetuity.* Such cases can be considered if and when they arise. *The present is not, in my judgment, of that character*, and it will be seen that

clause 2 (d) of the trust deed expressly states that, subject to any rules and regulations made by the trustees, the employees of the company shall be entitled to the use and enjoyment of the land. Apart from this possible exception, in my judgment the beneficiary principle of *In re Astor's Settlement Trusts*, which was approved in *In re Endacott, decd* … is confined to purpose or object trusts which are abstract or impersonal. The objection is not that the trust is for a purpose or object per se, but that there is no beneficiary or cestui que trust. …

…

Where, then, the trust, though expressed as a purpose, is directly or indirectly for the benefit of an individual or individuals, it seems to me that it is in general outside the mischief of the beneficiary principle. …

[emphasis added]

40 As has been widely observed, "Goff J's classification of the trust is not absolutely clear" (see HAJ Ford & WA Lee *et al*, *Principles of the Law of Trusts* (Thomson Reuters, Looseleaf Ed, 2013) ("*Ford & Lee*") at para 5.12710); there is "no universal agreement" as to whether Goff J understood it as a special kind of purpose trust or as an orthodox trust for persons (see *Lewin on Trusts* at para 4-40). While some cases have interpreted the trust in *Re Denley's Trust* as involving "more obviously a 'purpose' trust" (see *Strathalbyn Show Jumping Club Inc v Mayes* [2001] SASC 73 at [50], *per* Bleby J), others have found to the contrary that it falls, on a proper analysis, "altogether outside the categories of … purpose trusts" (see *In re Grant's Will Trusts* [1980] 1 WLR 360 at 370H, *per* Vinelott J; see also PJ Millett, "The Quistclose Trust: Who can Enforce it?" (1985) 101 LQR 269 at pp 281–282). The reasons why *Re Denley's Trust* is capable of giving rise to such contrasting interpretations are well-explained in the following passage of Geraint Thomas & Alastair Hudson, *The Law of Trusts* (Oxford University Press, 2nd Ed, 2010) ("*Thomas & Hudson*") at para 6.16:

It is not entirely clear how the trust in *Re Denley* was classified. Goff J clearly accepted that a trust expressed as a purpose, but indirectly for the benefit of an individual, was outside the mischief of the beneficiary principle. Moreover, the purpose of extracting the relevant distinction from the authorities seems clearly to have been to justify the conclusion that the trust in question was valid, notwithstanding the fact that it was expressed to be for a non-charitable purpose. On the other hand, his concern that the employees to be benefited should be ascertained or ascertainable at any given time suggests that it was a trust for individuals, and not a purpose trust at all. …

41 While the exact nature of the trust in *Re Denley's Trust* is not clear, there is strictly no necessity for me to weigh in on the above debate. This is because Mr Ponniah had advanced an interpretation of *Re Denley's Trust* which was entirely *unique* from the views I have canvassed above. In Mr Ponniah's submission, *Re Denley's Trust* was a case where "the object of the trust was a corporation" [note: 53] and, from this premise, he advanced the further argument that the trust in the present case should also likewise be expressed for the purpose of benefitting human beings and limited within the perpetuity period if it is to be upheld as valid.

42 I am unable to agree with Mr Ponniah's interpretation of *Re Denley's Trust*. There is nothing in Goff J's decision to suggest that he had treated the trust as being created for the benefit of the *company* there. As a matter of fact, the trust was clearly expressed to be for the purpose of benefitting the *employees* of the company. While it is not so clear from the decision whether the trust was, as a matter of law, actually treated as one for purposes or for persons, that, as I have stated, is not the issue which Mr Ponniah's submission raises. Once it is recognised that *Re Denley's*

Trust was not a case which involved a trust for a company, Mr Ponniah's entire argument that Goff J had upheld an exceptional kind of trust for corporate beneficiaries fails. There is therefore no sound basis for Mr Ponniah's attempt to draw certain features from that case – *viz*, the need of having a defined purpose to benefit humans and a defined duration – and apply them as qualifications to the trust in the present dispute.

43 Notwithstanding my finding that *Re Denley's Trust* has no application here, I consider it useful to make some observations on the general thrust of Mr Ponniah's submissions which seemed to me to effectively suggest that the express trust here *must*, in order to be valid, specify (a) a defined purpose; and (b) a defined duration. In my view, these submissions failed to fully appreciate certain fundamental areas of trusts law, namely, the distinction between express trusts for persons and for purposes as well as the common law rule against perpetuities; hence it is worthwhile to take the opportunity here to examine these concepts more closely.

(2) Trusts for persons vs. Trusts for purposes

44 An express trust must – in addition to complying with any applicable formal statutory requirements such as those in s 7(1) of the CLA – satisfy the "three certainties" of intention, subject-matter, and objects in order to be valid (see *Joshua Steven v Joshua Deborah Steven and others* [2004] 4 SLR(R) 216 at [12]).

45 Importantly, an express trust can be declared for different kinds of "objects". It should be clear from my earlier discussion of the "beneficiary principle" and *Re Denley's Trust* that an express trust can either be a trust for "*persons*" or a trust for "*purposes*" (see also *Ford & Lee* at paras 5.010–5.070). A trust for persons (including a body corporate) will generally be upheld as valid since such a trust does not usually create any difficulties in terms of enforceability and control. On the other hand, a trust for abstract purposes typically falls foul of the "beneficiary principle" for precisely the opposite reasons (see [32] above). The task of determining whether a trust is one for persons or for purposes will not, however, always be straightforward where a combination of persons and purposes appear (see *Moffat, Bean & Probert* at p 258), and this is well-exemplified by *Re Denley's Trust*. In such circumstances, it will be a question of construction as to whether the settlor had the primary object of making a gift to the person or having the specified purpose carried out (see *Ford & Lee* at para 5.090).

46 It should be mentioned, however, that not *all* purpose trusts are void by operation of the "beneficiary principle". There are exceptions but these can only be appreciated if the broad class of purpose trusts is further sub-categorised into charitable and non-charitable (*ie*, private) purpose trusts. Charitable purpose trusts have long been recognised at common law as constituting a significant exception to the "beneficiary principle". It does not matter that there is no beneficiary who can compel performance of the charitable trust because the Attorney-General may do so as the public guardian (see s 9(1), Government Proceedings Act (Cap 121, 1985 Rev Ed)). As for non-charitable purpose trusts, there are also certain recognised classes of anomalous purpose trusts, such as those for the erection or maintenance of monuments and graves, which constitute exceptions to the "beneficiary principle". These trusts are generally recognised as valid, notwithstanding the absence of any beneficiary, for reasons which have more to do with "human weakness or sentiment" rather than legal logic or principle (see *Hongkong Bank Trustee (Singapore) Ltd v Tan Farrer and others* [1988] 1 SLR(R) 53 at [15]).

47 With this taxonomy of express trusts in mind, it becomes clear that the express trust in the present case should be characterised as a trust for persons since there can be no doubt that it is for the benefit of an identifiable beneficiary, *viz*, the defendant company. It is certainly not a particular

variant of the altogether separate category of purpose trusts since the Deceased has never declared that he was holding the Leasehold for a specific purpose. I do not think that Mr Ponniah views the trust in this case any differently. However his argument on the basis of *Re Denley's Trust* seemed to suggest that, insofar as the trust here is for a corporate beneficiary, it must *also* prescribe a particular purpose to be valid. Can this be correct? In my view, clearly not.

48 The discussion above makes clear that a trust for persons and a trust for purposes are no more than distinct categories of express trusts which a settlor is entirely *free* to create, although he would be wise to note the different possible legal outcomes that attach to either of them at law. Mr Ponniah's submission, however, appears to advocate an entirely contrary position in suggesting that a settlor who intends to create a persons trust in the case of companies should nevertheless be *obligated* to further stipulate some purpose underlying the trust. I do not understand the law of trusts as constraining a settlor in this way, nor do I think it desirable that it should. In fact, I see no reason why a settlor should be placed in the rather invidious position of *having* to prescribe a purpose when that merely makes the trust more susceptible to being invalidated for offending the "beneficiary principle". For these reasons, I see no basis for Mr Ponniah's argument that the purported trust here fails because the Deceased was required to have *further* specified that the trust should be for the particular purpose of benefitting human beings.

(3) The rule against perpetuities

49 I turn now to consider that part of Mr Ponniah's argument which suggested that the purported trust offends the rule against perpetuities because, in the absence of any prescribed duration, it can in fact subsist indefinitely. It bears mention that this objection was not raised before the Assistant Registrar, [note: 54] yet it featured prominently in the plaintiffs' submissions on appeal. Even then, however, the plaintiffs appear to have a somewhat superficial understanding of the rule which, for their purposes, may have seemed attractive at first glance. I therefore find it crucial to first set out a clear understanding of the ambit of "*the rule against perpetuities*" in order to evaluate whether there is any substance in the plaintiffs' submission. This rule was considered by Tan Lee Meng J in *State of Johor and another v Tunku Alam Shah ibni Tunku Abdul Rahman and others* [2005] 4 SLR(R) 380 ("*State of Johor*") at [50] as follows:

> 50 … The effect of the rule against perpetuities is explained in *Williams on Wills* (Butterworths, 7th Ed, 1995) vol 1 at p 820 as follows:
>
> > *The rule is directed to ensure that interests shall vest within the period allowed by the rule, and if an interest is immediately vested or must necessarily vest within the period allowed, its validity cannot be questioned so far as this rule is concerned.* An interest becomes vested when, first, the person or persons or corporation or body of persons to whom or to which it is limited is or are ascertained and in existence and capable of taking, secondly, the quantum of the interest is ascertained, and thirdly, all other events have happened to enable the interest to come into possession at once, subject to the determination at any time of the prior interests.
>
> [emphasis added]

50 The broad rationale underlying this rule is to prohibit owners of property from rendering their properties inalienable. It is important, however, to focus on *how* exactly the rule seeks to achieve this purpose. In this regard, the passage above makes clear that the rule against perpetuities is, at its heart, concerned with the time within which future interests shall *vest*. By requiring that any interest must vest within the perpetuity period (if it vests at all) the rule prevents the settlor "from controlling

who should be entitled to his property too far into the future, thereby obviating control by 'the dead hand'" (see Tan Sook Yee, Tang Hang Wu & Kelvin FK Low, *Tan Sook Yee's Principles of Singapore Land Law* (LexisNexis, 3rd Ed, 2009) at para 6.15). A succinct explanation of the competing interests at play which this rule has a prominent role in balancing is provided by Ruth L Deech in her article "Lives in Being Revived" (1981) 97 LQR 593 at p 594 (also noted in United Kingdom, Law Commission, *The Rule Against Perpetuities and Excessive Accumulations* (Law Com No 251 of 1998) ("*Law Commission Report*") at para 1.9):

> The most convincing modern explanation of the functions of the Rule [against perpetuities] is the so-called Dead Hand Rationale. According to this doctrine, the Rule is necessary in order to strike a balance between on the one hand the freedom of the present generation and, on the other, that of future generations to deal as they wish with the property in which they have interests. If a settlor or testator had total liberty to dispose of his property among future beneficiaries, the recipients, being fettered by his wishes, would never enjoy that same freedom in their turn. The liberty to make fresh rearrangements of assets is necessary not only in order to be rid of irksome conditions attached by earlier donors to the enjoyment of income but also in order to be able to manoeuvre in the light of new tax laws, changes in the nature of the property and in the personal circumstances of the beneficiaries, unforeseeable by the best intentioned and most perspicacious of donors. …

51 The name given to the rule, *viz*, the "rule against perpetuities", has unfortunately become a trap for the unwary and created confusion through the years. As the learned author John C Gray has observed in the preface to his seminal treatise on the subject, *The Rule Against Perpetuities* (Little, Brown and Company, 4th Ed, 1942) at p x, its name serves as "a constant temptation to treat it as aimed against restraints on the alienation of *present* interests" [emphasis added] when, in truth, it is only concerned with the vesting of *future* interests. It has therefore been astutely observed that, despite its name, the rule against perpetuities should properly be understood as being "concerned with the *commencement* of interests rather than with their *duration*" [original emphasis], though by restricting the time within which future interests must vest, the rule will commonly have the effect of limiting the life of a trust (see *Law Commission Report* at para 1.6). The same point was also made by Mr Tan who, in his submissions, [note: 55] pointed out the following observation in AJ Oakley, *Parker and Mellows: The Modern Law of Trusts* (Sweet & Maxwell, 9th Ed, 2008) at para 7-009 which is particularly instructive for the present case:

> The rule … requires only that gifts must *vest* within the perpetuity period. This rule … has no application to the length of time during which property may be enjoyed once it has vested. Accordingly, if an outright gift is made to a limited company so that the gift vests in the company immediately, that company may hold the property for more than a thousand years without ever infringing the rule against remoteness. [original emphasis]

52 In the present case, there can be no dispute that the interest in the Leasehold vested *immediately* in the defendant company upon the Deceased's declarations of trust. It is clear from the Deceased's declarations (see [16] above) that he did not attach any conditions to postpone the vesting of the Leasehold. Viewed simply, this was a case in which A declared that he held the property on trust for B and beneficial interest in the property vested in B forthwith. In the absence of any *future* interests being created by the Deceased, the rule against perpetuities is simply not engaged at all. The defendant company, as the beneficial owner of the Leasehold, is free to deal with it as indeed it has over the years. There are simply no concerns regarding inalienability and there can be no objection to the fact that the Deceased did not go on to explicitly stipulate the *duration* within which the trust should come to an end. That, as I have explained, would be to misunderstand what the rule against perpetuities is directed at but, unfortunately, Mr Ponniah's submission appears to

suffer from the confusion which I had highlighted above. That also occurred in *State of Johor* where it was argued that a bequest of property in Singapore (known as Tyersall) under the will of the late Sultan Abu Bakar of Johor in favour of the reigning Sultan of Johor as "State property" was invalid because it infringed the rule against perpetuities. After setting out his understanding of the rule against perpetuities (see [49] above), Tan J went on to observe as follows at [51]–[52]:

> 51 The bequest of Tyersall as "State property" did not offend the rule against perpetuities because it is a bequest to a "corporation sole". *Black's Law Dictionary* (West Group, 7th Ed, 1999) defines a "corporation sole" as follows:
>
> > A series of successive persons holding an office; a continuous legal personality that is attributed to successive holders of certain monarchical or ecclesiastical positions, such as kings, bishops, rectors, vicars, and the like. This continuous personality is viewed, by legal fiction, as having the qualities of a corporation.
>
> 52 It follows that a sovereign in his political capacity is regarded as "immortal". The person who is sovereign may change but the sovereign is always present. *As the beneficial title to Tyersall* ***vested immediately*** *in the corporation sole*, ***the question of infringement of the rule against perpetuities does not arise*** *.*
>
> [emphasis added in italics and in bold italics]

53 I should mention, for the purposes of completeness and clarity, that there does exist a corollary "rule against inalienability" (or otherwise known as the "rule against perpetual trusts") which, much like the rule against perpetuities, is also motivated by the policy of preventing property from being rendered inalienable for too long a time. Unlike the rule against perpetuities, however, the rule against inalienability does in fact achieve this end by focusing on the *duration* of a trust but, importantly for present purposes, it is concerned only with a particular type of trust which has the potential to last forever, *viz*, the private purpose trust. There is no guarantee that the objects of such trusts (*ie*, the private purposes) will ever be completed; hence they must be prescribed to come to an end within the perpetuity period of a life in being plus 21 years (see Robert Pearce, John Stevens & Warren Barr, *The Law of Trusts and Equitable Obligations* (Oxford University Press, 5th Ed, 2010) at p 460). It has therefore been pithily observed that the rule against inalienability is, in reality, "just one of the devices that is employed to keep the development of [non-charitable purpose] trusts in check" (see *Law Commission Report* at para 1.14). When one appreciates the mischief which this rule is targeted at, it becomes clear that it has no application in the present context which, as has been established, concerns a trust for *persons* rather than a trust for *private purposes*. As succinctly stated in *Ford & Lee* at para 5.12710, "[t]he validity of a non-charitable purpose trust is tested in terms of *duration* of the trust whereas in relation to a trust for persons validity is tested in terms of the time of *vesting* of interests" [emphasis added] (see also, for a similar observation, Charles Mitchell, *Hayton & Mitchell: Commentary and Cases on the Law of Trusts and Equitable Remedies* (Sweet & Maxwell, 13th Ed, 2010) at para 7-62).

54 All things considered, I am not persuaded that there is any sound legal basis for Mr Ponniah's submission that the express trust in this case fails for omitting to specify a distinct purpose and/or a defined duration. This is not only because the submission is based on an erroneous interpretation of *Re Denley's Trust*, but also because, more fundamentally, it fails to properly appreciate the relevant trusts concepts which it sought to invoke.

The Mistake Issue

55 Mr Ponniah's alternative ground for invalidating the trust concerns the Deceased's certainty of intention (or lack thereof) in creating the express trust. In this regard, Mr Ponniah argued that the Deceased was labouring under, first, the mistake in law that he could hold the Leasehold on trust for the Partnership and, second, the further factual mistake that the Partnership was incorporated as the defendant company. It was submitted that the combination of these two mistakes ultimately led to the Deceased believing, at the time when he made the purported declarations of trust, that he was merely holding the Leasehold as a bare *trustee* for the defendant. He could not, therefore, have intended to part with the beneficial interest in the Leasehold at the time of his purported declarations when, in his mind, he did not even own it.

56 As evidence of the Deceased's alleged mistaken belief, the plaintiffs rely on, *inter alia*, the minutes of a directors' meeting of the defendant dated 23 October 1986 where the Deceased is recorded as having stated that "the [Partnership] was incorporated as a Limited Company". [note: 56] In her affidavit, the first plaintiff placed emphasis on this particular statement to point out the Deceased's "grave error of fact". [note: 57] The first plaintiff then went on to surmise that "[i]t will not be known for how long prior to 1986 and for how long after 1986 the deceased was labouring under this error of fact when he instructed the company's secretary, accountants and lawyers". [note: 58] It is asserted on this basis that the Deceased's mistaken belief must therefore have "found its way" [note: 59] into his purported declarations of trust which should, accordingly, be viewed as being emptied of any legal significance.

57 I have some difficulty with this argument. To begin with, the Deceased had never asserted throughout his lifetime that the declarations of trust were made on a mistaken basis. In fact, the evidence is to the contrary. He had consistently and repeatedly maintained that he held the Leasehold on trust for the defendant. Further, no satisfactory explanation was given as to *why* the Deceased might have believed that he was merely holding the Leasehold on trust for the Partnership. By the plaintiffs' own pleaded case, it was the Deceased who paid for the acquisition of the Leasehold and he was its absolute owner. The Deceased was also never a partner of the Partnership and so it is not immediately apparent why he should hold property on its behalf. The first plaintiff, however, hints at a possible explanation by stating in her affidavit that, "[i]n the purchase of the [Leasehold], the deceased may or may not have been gifted money by his father GCS" [note: 60] who, as will be recalled, was one of the founders of the Partnership. In my view, however, this is entirely speculative which, in any event, appears to contradict the plaintiffs' own pleaded case that the Deceased had paid for the Leasehold. I therefore had some doubts as to how exactly the Deceased came to labour under the alleged "mistake" that he was only a trustee of the Leasehold from the outset.

58 In fact, I would add that the sequence of events as outlined in my earlier discussion of the background facts and the parties' arguments equally suggests that the Deceased was probably not under any mistaken belief as regards the express trust at all. In this regard, it is noted that the Deceased became the registered legal owner of the Leasehold in 1981 (see [8(d)] above). The first declaration of trust then appeared in the defendant's audited accounts the very next year (see [16(a)] above). In my view, this can be read as being entirely consistent with the possibility that, when he made his first declaration in 1982, the Deceased's state of mind was in fact to hold the Leasehold on trust for the defendant. I also note that the manner in which the defendant's other properties was held is a further factor to suggest that the Deceased's declarations in respect of the Leasehold were by design rather than by mistake. As mentioned earlier at [16(a)] above, two other directors of the defendant, GCS and GCN, also had properties registered in their respective names besides the Deceased. GCS was registered as the legal owner of 169 Thomson Road, Goldhill Shopping Centre, Singapore 307621 ("No 169") and 171A Thomson Road, Goldhill Shopping Centre, Singapore

307622 ("No 171A") while GCN was registered as the owner of No 171 Thomson Road, Goldhill Shopping Centre, Singapore 307622 ("No 171"). [note: 61] It is telling, however, that both GCS and GCN had consistently treated these properties as belonging beneficially to the defendant during their lifetimes. This is borne out by the fact that, much like the Deceased in the present case, GCS and GCN had also made repeated declarations in the defendant's audited accounts that the respective properties in their names were being held on trust for the defendant. [note: 62] Therefore, when No 169 was sold in or about 1977, it followed that the sale proceeds were retained by the defendant. [note: 63] As for No 171 and No 171A, the *status quo* remains even though GCS and GCN have since passed away [note: 64] – their respective estates continue to hold these two properties on trust for the defendant as reflected in its audited accounts. I have made reference to the defendant's other properties here because it is important for the purposes of placing the present facts in their proper context. This discussion highlights that the defendant had a particular *modus operandi* in terms of how it held its properties from the very outset (*viz*, by having them registered in the names of its directors) and that did not change insofar as the properties held by GCS and GCN were concerned even after their demise. The Deceased's estate has, however, taken a contrary position in respect of the Leasehold but it is difficult to ignore the surrounding evidence which suggests that the Leasehold was merely part of a larger group of properties that was always *meant* to be held by the Deceased and two of his fellow directors on trust for the defendant. This ultimately cast yet more doubt over the plaintiffs' speculative suggestion that the Deceased's declarations were made pursuant to a mistaken belief.

59 Notwithstanding my observations above, I should state that I am, in any event, unable to see how Mr Ponniah's submission takes him very far. Even if I accept that, by virtue of his mistaken belief, the Deceased did not *know* that the beneficial interest in the Leasehold vested in him, I fail to see how this answers the question of what the Deceased had truly *intended* by his declarations. Knowledge and intention are two different states of mind and, in the creation of trusts, it is only the latter that the law of trusts is concerned with as one of the "three certainties". A settlor may therefore be held to have created a trust if he enters into arrangements which have that effect without him actually appreciating that they do so: this is so long as he intends to enter into those arrangements (see *Twinsectra Ltd v Yardley and others* [2002] 2 AC 164 at [71]). The essence of the plaintiffs' submission is tantamount to saying that the Deceased could only have *intended* to create a trust in favour of the defendant if he had *known* that he was capable of parting with the beneficial title in the Leasehold because he was its owner in the first place. However this will be an incorrect inquiry. The focus is simply on trying to ascertain what the Deceased had intended by his declarations in the various documents relied on by the defendant and, in my view, these documents show clearly and unequivocally that the Deceased *did* regard himself as holding the Leasehold on trust for the defendant. I do not see how they admit of any other interpretation. Mere proof of the Deceased's allegedly flawed knowledge does not change what he clearly intended to convey by these declarations.

60 Finally, even if the plaintiffs can establish the mistake, to succeed on this ground, they need to go one step further and prove that, had the Deceased known of his mistake, he would not have made the declarations *repeatedly* as he did. Only then will they be able to persuade this court that the Deceased truly did *not intend* to hold the Leasehold on trust for the defendant; that his "errors" were causative of, and therefore undermined, his declarations. However, the plaintiffs have not alleged this to be the case and, in any event, I do not see how they could make good such an allegation in the Deceased's absence. For these reasons, I find that Mr Ponniah's second main submission is equally unsustainable.

The Evidentiary Issue

61 Mr Ponniah's third main submission concerns the weight which ought to be placed on the defendant's audited accounts (see [16(a)] above) and the admissibility of the two affidavits which the Deceased had filed in DC 928/2000 (see [16(b)] above). I shall take each of these classes of documents in turn.

The defendant's audited accounts

62 Mr Ponniah's submission in respect of the audited accounts can be swiftly dealt with. This is because, as mentioned at [21] above, his contention was tied to the earlier allegation that the Deceased was mistaken as to the manner in which he held the Leasehold. It was argued that the audited accounts continued to reflect the Deceased's mistaken belief for so long as he laboured under it; hence they should be treated with caution. However, I have explained that *even if* the Deceased was indeed mistaken as the plaintiffs claim he was, that does not change what he had clearly intended to convey in the accounts and that is what matters in the creation of a trust. The accounts are accordingly, in my view, probative of the existence of a trust.

63 Mr Ponniah also pointed to s 34 of the Evidence Act (Cap 97, 1997 Rev Ed) ("EA") to argue that, even though the statements in the defendant's accounts may be relevant, they "shall not alone be sufficient evidence to charge any person with liability". However, it is clear that the defendant does not rely *solely* on the accounts to establish that the Deceased held the Leasehold on trust. I am therefore unable to see how s 34 of the EA aids the plaintiffs' case.

The two affidavits in DC 928/2000

64 In respect of the Deceased's two affidavits, Mr Ponniah relied on the Court of Appeal's decision in *Ching Mun Fong* to argue that this evidence was inadmissible. In *Ching Mun Fong*, the plaintiff company, Peng Ann Realty Pte Ltd ("Peng Ann"), sued one of its directors, Liu, and the director of another investment company, Tan, for conspiring to defraud it into selling three lots of land to Tan's company at an inordinately low price. The trial judge found that there was such a conspiracy to defraud based on, *inter alia*, an affidavit filed by Tan (who had passed away by the time of the trial) in an ongoing suit ("S 4149/1984") commenced by Liu's wife against him and two of his family companies. Peng Ann was not a party to that action. Tan's estate argued on appeal that the trial judge had wrongly admitted Tan's affidavit in evidence and the Court of Appeal agreed. The court reasoned that since Tan was not available to prove the contents of his affidavit, that constituted hearsay evidence which, in the circumstances, also could not be admitted under the statutory exception in s 33 of the Evidence Act (Cap 97, 1990 Rev Ed) ("1990 EA") which was then in force. The relevant portion of the court's decision at [20]–[21] is reproduced here:

> 20 … Before us, counsel for the appellants contended against the admissibility of these affidavits. *In so far as the affidavit of Tan is concerned, Tan (who had died) was not available to prove the content of what he had said in the affidavit and the affidavit is not admissible in evidence. Nor is it admissible under s 33 of the Evidence Act (Cap 97, 1990 Rev Ed)* which, so far as relevant, provides:
>
> > Evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is relevant for the purpose of proving in a subsequent judicial proceeding, or in a later stage of the same judicial proceedings, the truth of the facts which it states, when the witness is dead or cannot be found or ...
> >
> > Provided that —

(*a*) the proceeding was between the same parties or their representatives in interest;

(*b*) the adverse party in the first proceeding had the right and opportunity to cross-examine;

(*c*) the questions in issue were substantially the same in the first as in the second proceeding.

21 It was submitted that the affidavit of Tan does not satisfy the requirements of this section. Peng Ann was not a party in S 4149/84 and Tan was not cross-examined by the adverse party in that suit on the affidavit … Lastly, the question in issue in that suit and that in the case at hand are not substantially the same. *As the requirements have not been satisfied, Tan's affidavit is therefore not admissible in evidence.* In our opinion, on the basis of s 33 this argument is unanswerable, and we agree with it.

[emphasis added]

65 In my view, however, counsel for the defendant in the present case, Mr Tan, has correctly pointed out that the decision in *Ching Mun Fong* must now be seen in light of the recent amendment made by the Evidence (Amendment) Act 2012 (Act 4 of 2012) ("the 2012 Amendment") which introduced a new statutory exception to the rule against hearsay in the form of s 32(1)(*j*) of the EA. [note: 65] Section 32(1)(*j*) reads as follows:

Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant

32.—(1) Subject to subsections (2) and (3), *statements of relevant facts made by a person* (whether orally, *in a document* or otherwise), *are themselves relevant facts* in the following cases:

…

or is made by person who is dead or who cannot be produced as witness;

(j) *when the statement is made by a person in respect of whom it is shown —*

(i) *is dead* or unfit because of his bodily or mental condition to attend as a witness;

…

[emphasis added in italics]

66 Prior to the 2012 Amendment, the death of the maker of a statement was not *per se* sufficient to overcome the rule against hearsay. That, however, is no longer the case – under s 32(1)(*j*) of the EA, the unavailability of the maker of the statement is "the only condition which has to be satisfied" (see Jeffrey Pinsler SC, *Evidence and the Litigation Process* (LexisNexis, 4th Ed, 2013) at para 6.032). Therefore, had this provision been in existence at the time of *Ching Mun Fong*, the court may well have reached a different outcome as to the admissibility of Tan's affidavit since his death alone would have satisfied the requirement for admissibility under s 32(1)(*j*).

67 In these circumstances, I find that *Ching Mun Fong* does not assist Mr Ponniah. He is certainly correct to argue on the basis of *Ching Mun Fong* that the Deceased's two affidavits here are

inadmissible under s 33 of the EA since the plaintiffs were strictly not a party to DC 928/2000 (the affidavits were filed not in the Deceased's own right as a party but on behalf of the defendant), and the issues in DC 928/2000 are not substantially the same as in the present proceedings. [note: 66] However, here the defendant does not rely on s 33 to admit the Deceased's affidavits since s 32(1)(*j*) provides a much more straightforward route for this purpose. Mr Ponniah has not raised any arguments in this connection and, accordingly, I find that the Deceased's affidavits are admissible under s 32(1)(*j*) of the EA.

68 I should mention for completeness that I also agree with Mr Tan that the Deceased's affidavits are, in any event, admissible under s 32(1)(*c*) of the EA because the Deceased's statements that he held the Leasehold on trust for the defendant are certainly against his pecuniary interest. [note: 67] This exception to the hearsay rule does not appear to have been raised in *Ching Mun Fong* but it is certainly a relevant consideration in the present case. As stated in *Halsbury's Laws of Singapore* vol 10 (LexisNexis, 2013 Reissue) at para 120.142:

> Under [s 32(1)(*c*) of the EA], evidence of a declaration which limits, modifies or qualifies the declarant's pecuniary interest may be given. … [E]vidence may be given of a declaration that the declarant's title is subject to qualifications or limitations. *Evidence may be given that the declarant has declared a trust of certain property in favour of a certain beneficiary.* … [emphasis added]

Conclusion

69 In the premises, I find that the plaintiffs' action is plainly unsustainable in light of the unchallenged and incontrovertible documentary evidence which clearly shows that the Deceased was holding the Leasehold on trust for the defendant company. This is also completely consistent with how the Deceased had conducted himself over the course of his lifetime. I therefore uphold the Assistant Registrar's order to strike out the plaintiffs' claim under O 18 r 19(1)(*b*) and/or O 18 r 19(1)(*d*) of the ROC and for judgment to be entered on the defendant's counterclaim. The appeal is accordingly dismissed with costs fixed at $15,000 inclusive of disbursements to be paid by the plaintiffs to the defendant.

[note: 1] Statement of Claim (Amendment No 2) dated 28 March 2014 ("SOC (Amendment No 2)") at para 1.

[note: 2] Affidavit of Goi Wang Firn dated 20 August 2014 ("GWF's Affidavit") at p 45.

[note: 3] GWF's Affidavit at para 10.

[note: 4] SOC (Amendment No 2) at para 2; Defence and Counterclaim (Amendment No 3) dated 3 July 2014 ("D&CC (Amendment No 3) at para 3.

[note: 5] SOC (Amendment No 2) at para 2; D&CC (Amendment No 3) at para 3.

[note: 6] D&CC (Amendment No 3) at para 3.

[note: 7] GWF's Affidavit at para 8.

[note: 8] SOC (Amendment No 2) at para 5.

[note: 9] GWF's Affidavit at p 14.

[note: 10] GWF's Affidavit at p 25.

[note: 11] GWF's Affidavit at p 32.

[note: 12] GWF's Affidavit at p 27.

[note: 13] SOC (Amendment No 2) at para 9.

[note: 14] D&CC (Amendment No 3) at para 9.

[note: 15] SOC (Amendment No 2) at para 10.

[note: 16] Defendant's written submissions dated 16 October 2014 ("Defendant's Submissions"), Appendix A at para 10; 7th Affidavit of Goy Siang Boon dated 29 July 2014 ("GSB's Affidavit") at pp 283–324.

[note: 17] Defendant's Submissions, Appendix A at para 10; Plaintiffs' written submissions dated 16 October 2014 ("Plaintiffs' Submissions") at para 8.

[note: 18] Defendant's Submissions, Appendix A at para 11; Plaintiffs' Submissions at para 8.

[note: 19] Plaintiffs' Submissions at para 8.

[note: 20] GWF's Affidavit at para 9.

[note: 21] GWF's Affidavit at para 10.

[note: 22] GWF's Affidavit at para 11.

[note: 23] GWF's Affidavit at para 11.

[note: 24] GWF's Affidavit at para 12.

[note: 25] Statement of Claim dated 7 November 2013 at pp 4–5.

[note: 26] Defence and Counterclaim dated 9 January 2014 ("D&CC") at para 8.

[note: 27] D&CC at paras 9–11.

[note: 28] D&CC at para 16.

[note: 29] Plaintiffs' Submissions at para 9.

[note: 30] Summons No 3703 of 2014 filed on 29 July 2014.

[note: 31] Order of Court No 6470 of 2014 dated 19 September 2014.

[note: 32] Defendant's Submissions at paras 16(a)–(b).

[note: 33] Plaintiffs' Submissions at para 48.

[note: 34] Defendant's Submissions at para 16(f).

[note: 35] Defendant's Submissions at para 16(g).

[note: 36] Defendant's Submissions at para 16(h).

[note: 37] Affidavit of Mr Thomas Toh Siew Sai dated 15 July 2014 at para 19.

[note: 38] Defendant's Submissions at para 15.

[note: 39] Defendant's Submissions at paras 16(c)–(d).

[note: 40] Plaintiffs' Submissions at paras 26–27.

[note: 41] Plaintiffs' Submissions at para 29.

[note: 42] Plaintiffs' Submissions at para 30.

[note: 43] Plaintiffs' Submissions at para 33.

[note: 44] Plaintiffs' Submissions at paras 39, 44 and 47.

[note: 45] Plaintiffs' Submissions at para 19.

[note: 46] Plaintiffs' Submissions at para 43(a).

[note: 47] Plaintiffs' Submissions at para 43(c).

[note: 48] Plaintiffs' Submissions at paras 24 and 43(c).

[note: 49] Plaintiffs' Submissions at para 34(d).

[note: 50] Plaintiffs' Submissions at para 50.

[note: 51] Defendant's written submissions in reply dated 23 October 2014 at para 4.

[note: 52] Defendant's further written submissions dated 31 October 2014 ("Defendant's Further Submissions") at paras 11–13.

[note: 53] Plaintiffs' Submissions at para 29.

[note: 54] Defendants' Further Submissions at para 27.

[note: 55] Defendant's Further Submissions at para 34.

[note: 56] GWF's Affidavit at para 17.

[note: 57] GWF's Affidavit at para 19.

[note: 58] GWF's Affidavit at para 20.

[note: 59] GWF's Affidavit at para 22.

[note: 60] GWF's Affidavit at para 16.

[note: 61] Plaintiffs' Submissions at para 20; D&CC (Amendment No 3) at para 8(1).

[note: 62] Defendant's Submissions, Appendix A at para 4.

[note: 63] Defendant's Further Submissions at para 52.

[note: 64] Plaintiffs' Submissions at para 20.

[note: 65] Defendant's Submissions, Appendix B at para 6.

[note: 66] Plaintiffs' Submissions at paras 49–50.

[note: 67] Defendant's Submissions, Appendix B at paras 11–15.

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